

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13, SPECIAL OFFENCES COURT
BEFORE THE HON. JUSTICE M. A. DADA (MRS.)
TODAY FRIDAY THE 4TH DAY OF MAY, 2018.

CHARGE NO: LD/6764C/2018

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA	COMPLAINANT
AND	
NSA AYI	DEFENDANT

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JUDGMENT

The Defendant herein was initially charged and arraigned on 11 Counts of Offences bordering on Fraudulent False Accounting contrary to **Section 335 (a)** of the **Criminal Law of Lagos State of Nigeria, 2011** on Information dated 17/01/18 to which he pleaded not guilty on 26/02/2018.

Trial commenced on 6/03/18 with Mr Dele Dopemu as PW1. He is the Chief Internal Auditor of Coronation Merchant Bank. He gave evidence as to how he had worked with the Bank for about 20 years and knew the Defendant who he said worked in the Private Banking Section of Coronation Merchant Bank as a Relationship Manager. He testified that on 30/10/17, the Managing Director of the Bank called him and others to his office and said the Defendant was trying to borrow some large sums of money from the customers of the Bank. He stated that the Defendant was invited to the Managing Director's office and was asked why he wanted so much money and he made written statement concerning some money he fraudulently took from some accounts. That the Bank then handed the Defendant to EFCC by a Petition which he tendered and is **Exhibit 1** before the Court. Witness stated there were series of correspondences between the Bank and EFCC. He confirmed the Account of Ogunjemiyo E. Mascot with the Bank.

It was at this stage that learned silk for the Defendant, chief Robert Clarke SAN sought to address the Court whereat he informed the Court that having looked at the charge, the statements of witnesses, and the documents to be tendered, he would want to confer with the Defendant and the Prosecuting Counsel, Rotimi Oyedepo esq.



The Case was stood down and when it was recalled, Chief Clarke SAN informed the Court, they had agreed to change the plea. The 11 Counts of the Information were again read out to the Defendant and he pleaded guilty to each of the Counts.

The Prosecution thereafter made a statement of the facts of the case culminating in the institution of this case and tendered the 9 paged handwritten statement of the Defendant dated 30/10/2017, a Coronation Merchant Bank Letter addressed to EFCC dated 13/11/17 with Accounts details of African Alliance Insurance Plc., Ogunjemiyo Esan Mascot and Ndubueze Caroline Obi, the Certificate of Identification, another Letter from Coronation Merchant Bank dated 20/11/17 with the Accounts details of Nkposong Theresa Nkoyo and 13 Statements of the Defendant to EFCC dated 30/10/17, 31/10/17, 2/11/17, 6/11/17, 7/11/17, 8/11/17, 15/11/17, 17/11/17, 22/11/17, 29/11/17, 5/12/17, 14/12/17 and 21/12/17 all of which are **Exhibits 2-17** respectively. The Statements of;

1. Ndubuisi Caroline to the EFCC dated 24/01/18 with its attachments;
2. Ogunjemiyo Esan Mascot to EFCC dated 10/01/18 with its attachments;
3. Adekola A. Olabisi to the EFCC dated 9/11/17 with its attachments;
4. The purported instructions of Nkposong Theresa dated 19/11/2016, 15/02/17 and 23/03/17;
5. PWI's statements to EFCC dated 1/11/17 and 12/12/17;
6. The Statement of Ibrahim Babatunde Bello to the EFCC dated 31/10/17 and Coronation Merchant Bank's letter to EFCC dated 9/11/17 with its attachments were also tendered and admitted as **Exhibits 18-27** respectively.

Both Counsels urged the Court to find the Defendant guilty and convict him accordingly.

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The Court thereafter enquired from the Defendant pursuant to **Section 213 (1) (111)** of the **Administration of Criminal Justice Law, 2015** whether his plea of guilty was to the facts as stated and the **Exhibits** tendered by the Prosecution to which he said 'YES'.

The Defendant was thus convicted as charged while sentencing was deferred to enable Parties agree on the proposed Plea Bargain Agreement. However, after 2 further adjournments, when Parties were not able to agree to terms, the Plea Bargain Agreement was foreclosed. Learned silk for the Defendant, Chief Robert Clarke made an Allocutus praying that the Defendant being a first offender with no previous criminal record, should be given less term of imprisonment to enable him garner the cash with which to pay back the money involved in this case. He submitted that 2 properties were traced to the Defendant both valued at N100M and that the Defendant had shares and stocks



which he could convert into cash only when he is released from custody and urged the court to grant him less sentence to ensure the early repayment.

The Prosecuting Counsel in Court, E. E. Iheanacho on his part urged for the maximum sentence as provided to serve as deterrence to other would be people in the society to desist from committing such crimes. He also urged the court to order restitution as the money involved is Depositors'.

Although, it may appear that the law under which the Defendant was charged and arraigned may be wrong, it is provided under **Section 154** of the **Administration of Criminal Justice (Repeal and Re-Engagement) Law of Lagos State, 2015** that, "Where the charge preferred against any person is imperfect or erroneous, the Court may permit or direct the framing of a new charge or add to or otherwise alter the original Charge"

Section 158 of the said Law also provides on the effect or error that, "No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the defendant was in fact misled by such error or omission"

Furthermore, **Section 159 (c)** of the same Law provides that, "any alleged defect in substance or in form in any charge, complaint, warrant or other process relating to the charge and the evidence adduced in respect of the charge" is cured by Verdict.

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And in fact, **Section 166** states that, "If at any Trial for any offences mentioned in the Criminal Law applicable in the State, the facts proved in evidence justify a conviction for some other offences, and not the offence for which the Defendant is charged, he may be found guilty of the said other offences and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offences"

Therefore, the relevant provision of the extant Law on Fraudulent False Accounting to which the Defendant pleaded guilty and was convicted is **Section 337** of the **Criminal Law of Lagos State, 2015** which provides thus:-

Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud-

- (a) Destroys, alters, mutilates, or falsifies any book, document, valuable security, or account, which belongs to or is in the possession of his employer, or has been received by him on behalf of his employer, or any entry in any such book, document, or account, or is privy to any such act;



- (b) Makes, or is privy to making any false entry in any such book, document, or account; or
- (c) Omits, or is privy to omitting entry from any such book, document, or account, commits a felony, and is liable on conviction to imprisonment for seven (7) years.

The Provision clearly admits of no discretion on the part of the Court to lessen or increase the term of the imprisonment even for a first offender as the Defendant-as pleaded in the allocutus of his Counsel, the learned silk on his behalf.

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The Defendant is accordingly sentenced to 7 years imprisonment to run concurrently from the date of his remand in Prison.

It hereby also ordered that the Defendant shall forfeit and the Court hereby confiscates all the assets and properties of the Defendant where so ever traced to until the total sum of N700 Million (Seven Hundred Million Naira) alleged and proved to have been fraudulently diverted by the Defendant is fully recovered and restored to the victim which is Coronation Merchant Bank Limited pursuant to **Exhibit 1**.

This is the Judgment of the Court.

M.A. Dada

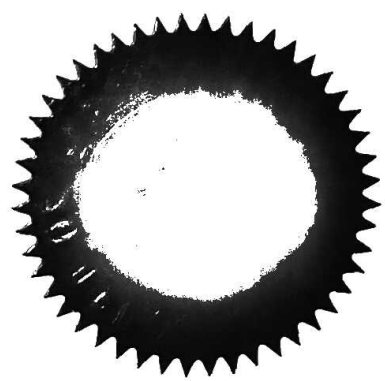
HON. JUSTICE M.A. DADA (MRS)
JUDGE
(04/05/18)

Defendant Present.

Ayanfe Ogunsina for the Prosecution

S.A. Oshodi for the Defendant with I.B. Mohammed esq,

Adebayo Amid and Derek Emmanuel.



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06/06/18
Akinwande O. P.
Commissioner For Oaths
High Court Of Lagos, Ikeja



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